

## **AGENDA**

### **COMMITTEE ON ADMINISTRATION/INFORMATION SYSTEMS**

**June 5, 2007**

**Aldermen O'Neil, Lopez, Smith,  
Forest, DeVries**

**6:15 PM**

**Aldermanic Chambers  
City Hall (3<sup>rd</sup> Floor)**

1. Chairman O'Neil calls the meeting to order
2. The Clerk calls the roll.
- 3 Consideration of agreement between MCTV and the City.
4. If there is no further business, a motion is in order to adjourn.

# WADLEIGH, STARR & PETERS, P.L.L.C.

WILLIAM C. TUCKER  
EUGENE M. VAN LOAN III  
JOHN E. FRIBERG, Sr.  
JAMES C. WHEAT  
JOHN A. LASSEY  
RONALD J. LAJOIE  
KATHLEEN N. SULLIVAN  
JEFFREY H. KARLIN  
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CHARLES F. CLEARY  
CHRISTINE DESMARAIS-GORDON  
JENNIFER L. MURPHY (Of Counsel)  
TODD J. HATHAWAY  
STEPHEN J. JUDGE  
STEPHEN L. BOYD  
GREGORY M. SARGENT  
ALISON M. BETHEL  
MICHAEL J. TIERNEY

May 31, 2007

Thomas I. Arnold, III  
Deputy City Solicitor  
City of Manchester  
One City Hall Plaza  
Manchester, NH 03101

Re: MCTV Designation as Education/Government Access Provider

Dear Tom:

As you may be aware, Attorney Mary Tenn has been assisting Manchester Community Television ("MCTV") in defining its role as the governmental and educational access provider for the City of Manchester and the School District. Her efforts have resulted in the drafting of a Cable Access Designation Agreement which defines MCTV's responsibilities and provides continuity in funding.

We have reviewed the draft Agreement on behalf of the District. The Agreement contemplates that it would be submitted to both the School Board and the Board of Mayor and Aldermen for their approval. Therefore, I enclose a copy for your review prior to our submission of the same to the respective governing bodies. Please give me a call if you have any questions.

Very truly yours,

Dean B. Eggert

/ajm

Enclosure

cc: Dr. Michael Ludwell, Superintendent  
Mary Tenn, Esq.  
Dr. Grace Sullivan

**AGREEMENT BETWEEN  
THE CITY OF MANCHESTER, NEW HAMPSHIRE  
AND  
THE MANCHESTER SCHOOL DISTRICT**

Agreement made this \_\_\_\_ day of \_\_\_\_\_, 2007 by and between the City of Manchester, New Hampshire (hereinafter "City"), a body corporate and politic with an address of One City Hall Plaza, Manchester, New Hampshire and the Manchester School District, SAU #37, (hereinafter "School District") with an address of 286 Commercial Street, Manchester, New Hampshire regarding Manchester Community Television ("MCTV").

WHEREAS, MCTV is, and has been for the past fifteen years, a collaborative initiative between the City and the School District providing education and government access programming in the City, as well as learning opportunities in the School District;

WHEREAS, MCTV is, and has been for the past fifteen years, funded by the Board of Mayor and Aldermen, and administered through the School District;

WHEREAS, MCTV is, and has been for the past fifteen years, the provider for education and government access programming in the City;

WHEREAS, the City and the School District are able to achieve efficiency and economy of scale through the collaborative initiative of MCTV;

WHEREAS, MCTV has a proven track record of delivering high-quality education and government access programming in the City, as well as educational opportunities;

WHEREAS, the City granted a Cable Television Renewal Franchise dated October 20, 2000, as amended, to Media One of New Hampshire (hereinafter "Cable Company") to which Comcast of New Hampshire, Inc. (hereinafter "Cable Company") is a successor in interest;

WHEREAS, the Cable Contract provides that the City may designate an access provider to operate and administer public, education and government access channels;

WHEREAS, the Cable Contract provides that the Cable Company will provide certain payments to the City for access equipment and facilities;

WHEREAS, the Cable Contract provides that the Cable Company will pay an on-going franchise fee ("Franchise Fee") to the City for use in support of public, education and government access channels;

WHEREAS, the City desires to provide continued and stable support for the use of cable

television education and government access channels as contemplated by the Cable Contract;

WHEREAS, the five (5) people presently working at MCTV are employees of the School District;

WHEREAS, the School District desires to provide learning opportunities in the area of media communications and instructional programming through MCTV;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Term. This Agreement shall be for a period of eight (8) years, commencing on July 1, 2007 and ending on June 20, 2015, unless earlier terminated, as provided for in this Agreement.
2. Designated Education and Government Access Provider. MCTV is designated as the access provider for both education and government access programming, which programming presently is televised on cable channel 16 and 22, respectively. MCTV shall have full rights and obligations accorded to the access provider as set forth in the Cable Contract, and specifically has the right to manage all channel capacity and content for education and government programming on channels 16 and 22. Such designation of MCTV as the education and government access provider shall not be revoked in the absence of failure to provide educational and governmental access, malfeasance, misappropriation or misuse of funds provided by the City, or a mutual agreement of the City and District to revoke this Agreement.
3. Duties. MCTV shall operate the educational and government access channel(s) in a manner consistent with the Cable Franchise Agreement, federal and state law and its operating policies and procedures. MCTV's primary duty shall be to provide governmental access and educational access to the citizens of the City of Manchester and the School District.
4. Funding for MCTV. MCTV shall be funded as set forth in this paragraph.
  - a. Computation. The City shall pay to the School District two-fifths (40%) of the five percent (5%) franchise fee that the City receives pursuant to the Cable Contract for the sole benefit of and use by MCTV. The formula for determining and making payment shall be as follows:

2% of the Cable Company's applicable gross receipts that is due to the City for each quarter of the City's fiscal year, which presently ends each year on June 30, for the duration of this Agreement. Said payments shall be made by the City to the School District on a quarterly basis contemporaneous with the close of each quarter, based upon the most recent previous quarter, with the exception that for the period beginning

July 1, 2007 to June 30, 2008, MCTV shall be funded in accordance with the City's Fiscal Year 2008 budget resolution, in lieu of the quarterly payments referenced herein.

- b. Initial Grant. The City also shall pay to the School District a one-time lump sum payment of \$432,304.67 from the facilities and equipment grant received by the City pursuant to the Cable Contract ("Grant Transfer payment") on or before July 1, 2007 for the sole use and benefit of MCTV. The funds shall be maintained in a separate interest bearing account, with the interest to be collected and held for the sole use and benefit of MCTV. MCTV will be permitted to use such funds for the purchase, lease, improvement, or maintenance or equipment, facilities or services as provided for in the Cable Contract.
- c. Equipment and Studio. All equipment and furnishings presently used by MCTV at the Manchester School of Technology ("Present Equipment") are the property of the City for the sole and exclusive use by MCTV, and will continue to be used by MCTV regardless of where MCTV may be located in the future. The Present Equipment is to be used by MCTV at its sole discretion, subject only to its duties and obligations as a cable access provider and the terms of this Agreement. The School District acknowledges that it has no right, title, or interest in any equipment or furnishings purchased with City funds, Cable Franchise fees or cable equipment grant monies. Any future equipment or furnishings purchased by MCTV will remain property of the City. MCTV, upon approval of the School District, may be relocated in a building other than an existing School building.
- d. Restricted Funding. All payments made by the City to the School District regarding MCTV and this Agreement (whether quarterly payments, lump-sum payments, Grant Transfer payment or any other payment of any kind), shall be held by the School District for the sole use by and benefit of MCTV. All funds received pursuant to this Agreement shall be used for the purpose of education and government access programming and the goals and objectives set forth in the MCTV Strategic Plan as approved by the Board of School Committee of the School District in November, 2005, and such other Plans as are approved by the Board of School Committee. The School District acknowledges that any and all funds received pursuant to this Agreement are restricted funds which are to be used for the sole and exclusive purposes of MCTV.
- e. School District Budget. The payments made by the City pursuant to this Agreement to the School District shall not be a credit against, addition to

or reduction from the School District's annual budget.

5. Administration. For the duration of this Agreement, the School District shall continue to provide general administrative support for MCTV, including maintaining financial records, receiving revenue and making payments on behalf of MCTV, processing payroll and other benefits, and assistance with requisitions, procurements, or grants. The School District shall maintain detailed financial records regarding MCTV, in accordance with its general practices, and shall assist MCTV in providing the financial information referenced paragraph \_\_\_\_ below. MCTV's financial records shall be audited as part of the School District's audit; the reasonable cost of which may be charged against MCTV's budget. The City shall have reasonable access to these records.

6. Long-Term Obligations and Expenditures Over Twenty Thousand Dollars (\$20,000.00). To the extent MCTV operations involve any long-term obligations (i.e. more than one (1) year), all such obligations shall also be approved by the City. The City and District shall be required signatories on all such obligations, including any lease agreement. To the extent that MCTV operations require the expenditure of amounts over twenty thousand dollars (\$20,000.00), all such expenditures shall also be approved by the City. Any request for an expenditure over twenty thousand dollars (\$20,000.00) shall be presented to the Committee on Administration and approved by the Board of Mayor and Aldermen before the School District may release such funds.

7. Employees. The five (5) people presently working at MCTV are and shall remain employees of the School District and shall remain subject to the policies of the District. Nothing herein shall be construed to alter the present employment relationship of those working at MCTV. It is anticipated that to the extent future hiring is needed for work on MCTV, such future hires also would be School District employees.

8. Learning Opportunities. It is acknowledged that MCTV shall continue to offer extended learning opportunities for School District students and staff in accord with its past practice, including a graded course of independent study through the School District for High School Students.

9. Content. It is acknowledged and agreed that neither the City, nor the School District have the right to improperly influence, restrict, or direct the content of education or government programming. MCTV shall display a credit on a regular basis, but no less than weekly, which states: "MCTV is a collaborative initiative between the City of Manchester and the Manchester School District. MCTV is funded by the Board of Mayor and Aldermen, and is administered through the School District."

10. Copyright. MCTV shall own the copyright of all programming produced by MCTV. Both the City and the School District have full and unencumbered rights to use any MCTV copyrighted programming for non-commercial purposes. To the extent the City, the

School District or MCTV receive any payment for MCTV programming, such payment shall be forthwith transferred to the School District for the sole benefit of and use by MCTV consistent with paragraph \_\_\_\_ above.

11. Future Technology. MCTV is the City's voice for education and government access programming, and has a vested interest in securing funding from various cable and/or other electronic media outlets. It is anticipated that for so long as this Agreement is in effect, the City would invite the Director of MCTV or another MCTV designee to be included in any future cable contract negotiations, satellite (DBS) or other communications media that the City may regulate as the keeper of the public trust.

12. Reporting to Board of Mayor and Aldermen. MCTV shall make an annual report ("Annual Report") to the Board of Mayor and Aldermen in October of each year.

The Annual Report shall, at a minimum, include:

- a. A list of all MCTV employees, and brief summary of the responsibilities of each;
- b. A list of the members of the MCTV Advisory Board;
- c. A list of the hours of programming produced and cablecast in the prior fiscal year;
- d. A financial statement for the prior fiscal year, which shall include budget summary and list of equipment and facilities inventory; and
- e. A brief description of proposed future projects.

13. Reporting to Superintendent and Board of School Committee. MCTV shall make a monthly operational report to the Superintendent and Board of School Committee. A copy of the Annual Report furnished to the Board of Mayor and Aldermen shall be provided to the Superintendent and Board of School Committee.

14. Review and Assessment. After five (5) years of operation under this Agreement (2012), MCTV shall contract with an expert in educational and governmental access to conduct a review of the City and School District educational and government access needs and to make appropriate recommendations for meeting future needs in the area of government and educational access. A copy of the review shall be submitted to the City and District and shall be a public document.

15. Funding from Other Sources. MCTV may apply for, and receive, subject to School District approval, any federal, state or private grants, and may raise funds and receive gifts to the extent allowed by law.

16. Property and Liability Insurance. The City shall maintain comprehensive property and liability coverage for the operations of and equipment used by MCTV, or otherwise cover



MCTV consistent with its self-insurance protocol regardless of where the MCTV studio and offices are located within the City. To the extent the equipment used by MCTV exceeds one hundred thousand dollars (\$100,000) the City will procure any necessary insurance coverage with the expense therefore to be reimbursed by MCTV. The City shall continue to self insure MCTV and the School District (or if it so desires, procure insurance) to cover liability for the content of productions which are cablecast on the government and education access channels.

17. Termination. This Agreement may be terminated by mutual agreement of the City and School District

The City shall have the right to terminate this Agreement, including all funding set forth herein, upon 120 days notice for:

- a. Breach of any provision of this Agreement by the School District;
- b. Malfeasance, or misappropriation or misuse of funds provided by the City pursuant to this Agreement; or
- c. Revocation of the designation of MCTV as access provider for education and government access.

The School District shall have the right to terminate this Agreement, upon 120 days notice for:

- a. Breach of any provision of this Agreement by the City; or
- b. Revocation of the designation of MCTV as access provider for education and government access programming.

18. Sublet, Transfer or Assignment. This Agreement and any provisions herein may not be sublet, transferred or assigned without the express written agreement of the City and District, which consent the City or District may in their sole discretion grant or deny.

19. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.

20. Notices. Any notices or other communication regarding this Agreement shall be provided by delivering in hand or mailing, via United States first-class mail, postage prepaid, to the following:

To the City:  
City of Manchester  
City Clerk  
One City Hall Plaza  
Manchester, NH 03101



With copies to the Mayor and the City Solicitor.

To the School District:

Manchester School District, SAU #37  
Clerk, Board of School Committee  
286 Commercial Street  
Manchester, NH 03101

With copy to the Superintendent and MCTV.

To MCTV:

Grace L. Sullivan  
Manchester Community Television  
530 South Porter Street  
Manchester, NH 03103

The City, the School District and/or MCTV may change the person to whom or the location where notice shall be sent for their respective benefit, at any time, by written notice to all others set forth in this paragraph.

21. Amendment. This Agreement shall be binding upon the Parties and may not be abandoned, supplemented, changed, or modified in any manner, orally or otherwise, except by an instrument in writing of concurrent or subsequent date signed by each Party.

22. Authorization. Each party hereto represents and warrants that such individual is fully authorized to enter into this Agreement on behalf of that party and that this Agreement is binding thereon and that no other signature is necessary to bind said party.

23. Construction. This Agreement shall be constructed as if the Parties jointly prepared this Agreement. Any uncertainty and ambiguity shall not be interpreted against any one Party hereto.

24. Cooperation. The Parties understand and agree that they may be required to cooperate with each other in order to complete this Agreement and effectuate its intent, and agree that they will not interfere with the other regarding this Agreement.

25. Execution Copies. The Parties understand and agree that this Agreement will be signed in multiple and counterparts.

IN WITNESS WHEREOF, the signatories hereto have set their hand to this Agreement as of the date written below.

City of Manchester

\_\_\_\_\_  
Duly authorized by Frank C. Guinta  
Mayor

STATE OF NEW HAMPSHIRE, COUNT OF HILLSBOROUGH

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned officer, personally appeared Frank C. Guinta, in his capacity as Mayor on behalf of the City of Manchester, and being duly sworn did acknowledge that he executed the same for the purposes therein contained.

Witness my hand and seal.

\_\_\_\_\_  
Justice of the Peace/Notary Public

Manchester School District, SAU #37

\_\_\_\_\_  
Duly authorized by Michael Ludwell, Ph.D.  
Superintendent

STATE OF NEW HAMPSHIRE, COUNTY OF HILLSBOROUGH

On this the \_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned officer, personally appeared Michael Ludwell, in his capacity as Superintendent of the Manchester School District and being duly sworn did acknowledge that he executed the same for the purposes therein contained.

Witness my hand and seal.

\_\_\_\_\_  
Justice of the Peace/Notary Public



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May 31, 2007

Thomas I. Arnold, III  
Deputy City Solicitor  
City of Manchester  
One City Hall Plaza  
Manchester, NH 03101

Re: MCTV Designation as Education/Government Access Provider

Dear Tom:

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Very truly yours,

Dean B. Eggert

/ajm

Enclosure

cc: Dr. Michael Ludwell, Superintendent  
Mary Tenn, Esq.  
Dr. Grace Sullivan

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AND  
THE MANCHESTER SCHOOL DISTRICT**

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a. Computation. The City shall pay to the School District two-fifths (40%) of the five percent (5%) franchise fee that the City receives pursuant to the Cable Contract for the sole benefit of and use by MCTV. The formula for determining and making payment shall be as follows:

2% of the Cable Company's applicable gross receipts that is due to the City for each quarter of the City's fiscal year, which presently ends each year on June 30, for the duration of this Agreement. Said payments shall be made by the City to the School District on a quarterly basis contemporaneous with the close of each quarter, based upon the most recent previous quarter, with the exception that for the period beginning

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16. Property and Liability Insurance. The City shall maintain comprehensive property and liability coverage for the operations of and equipment used by MCTV, or otherwise cover

MCTV consistent with its self-insurance protocol regardless of where the MCTV studio and offices are located within the City. To the extent the equipment used by MCTV exceeds one hundred thousand dollars (\$100,000) the City will procure any necessary insurance coverage with the expense therefore to be reimbursed by MCTV. The City shall continue to self insure MCTV and the School District (or if it so desires, procure insurance) to cover liability for the content of productions which are cablecast on the government and education access channels.

17. Termination. This Agreement may be terminated by mutual agreement of the City and School District

The City shall have the right to terminate this Agreement, including all funding set forth herein, upon 120 days notice for:

- a. Breach of any provision of this Agreement by the School District;
- b. Malfeasance, or misappropriation or misuse of funds provided by the City pursuant to this Agreement; or
- c. Revocation of the designation of MCTV as access provider for education and government access.

The School District shall have the right to terminate this Agreement, upon 120 days notice for:

- a. Breach of any provision of this Agreement by the City; or
- b. Revocation of the designation of MCTV as access provider for education and government access programming.

18. Sublet, Transfer or Assignment. This Agreement and any provisions herein may not be sublet, transferred or assigned without the express written agreement of the City and District, which consent the City or District may in their sole discretion grant or deny.

19. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of New Hampshire.

20. Notices. Any notices or other communication regarding this Agreement shall be provided by delivering in hand or mailing, via United States first-class mail, postage prepaid, to the following:

To the City:  
City of Manchester  
City Clerk  
One City Hall Plaza  
Manchester, NH 03101

With copies to the Mayor and the City Solicitor.

To the School District:

Manchester School District, SAU #37  
Clerk, Board of School Committee  
286 Commercial Street  
Manchester, NH 03101

With copy to the Superintendent and MCTV.

To MCTV:

Grace L. Sullivan  
Manchester Community Television  
530 South Porter Street  
Manchester, NH 03103

The City, the School District and/or MCTV may change the person to whom or the location where notice shall be sent for their respective benefit, at any time, by written notice to all others set forth in this paragraph.

21. Amendment. This Agreement shall be binding upon the Parties and may not be abandoned, supplemented, changed, or modified in any manner, orally or otherwise, except by an instrument in writing of concurrent or subsequent date signed by each Party.

22. Authorization. Each party hereto represents and warrants that such individual is fully authorized to enter into this Agreement on behalf of that party and that this Agreement is binding thereon and that no other signature is necessary to bind said party.

23. Construction. This Agreement shall be constructed as if the Parties jointly prepared this Agreement. Any uncertainty and ambiguity shall not be interpreted against any one Party hereto.

24. Cooperation. The Parties understand and agree that they may be required to cooperate with each other in order to complete this Agreement and effectuate its intent, and agree that they will not interfere with the other regarding this Agreement.

25. Execution Copies. The Parties understand and agree that this Agreement will be signed in multiple and counterparts.

IN WITNESS WHEREOF, the signatories hereto have set their hand to this Agreement as of the date written below.

City of Manchester

\_\_\_\_\_  
Duly authorized by Frank C. Guinta  
Mayor

STATE OF NEW HAMPSHIRE, COUNT OF HILLSBOROUGH

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned officer, personally appeared Frank C. Guinta, in his capacity as Mayor on behalf of the City of Manchester, and being duly sworn did acknowledge that he executed the same for the purposes therein contained.

Witness my hand and seal.

\_\_\_\_\_  
Justice of the Peace/Notary Public

Manchester School District, SAU #37

\_\_\_\_\_  
Duly authorized by Michael Ludwell, Ph.D.  
Superintendent

STATE OF NEW HAMPSHIRE, COUNTY OF HILLSBOROUGH

On this the \_\_\_\_ day of \_\_\_\_\_, 2007, before me, the undersigned officer, personally appeared Michael Ludwell, in his capacity as Superintendent of the Manchester School District and being duly sworn did acknowledge that he executed the same for the purposes therein contained.

Witness my hand and seal.

\_\_\_\_\_  
Justice of the Peace/Notary Public

